MADRAS ACT No. IV OF 1899.[1]

[THE MADRAS COURT OF WARDS (AMENDMENT) ACT, 1899.]

[22*nd June* 1899 : 3*rd July* 1899.]

An Act to amend Madras Regulation V of 1804.

[*Repealed except in the Scheduled Areas.*]

MADRAS ACT No. I OF 1900.[2]

[THE MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT, 1899.]

[9*th January* 1900.]

An Act to secure to tenants in the Malabar district compensation for improvements.

Preamble.

WHEREAS it is expedient to amend the law relating to compensation for improvements made by tenants in the Malabar district ; It is hereby enacted as follows :—

Short title and local extent.

1. This Act may be called the Malabar Compensation for Tenants Improvements Act, 1899 ; and it shall be applicable to the whole of the Malabar district.

2. [*Repeal of Act I of* 1887.] *Rep. by the Repealing and Amending Act,* 1901 (*Central Act XI of* 1901).

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[1] Short title, "The Madras Court of Wards (Amendment) Act, 1899" was given by the Repealing and Amending Act, 1901 (Central Act XI of 1901).

For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 31st January 1899, p. 4 ; for Proceedings in Council, *see ibid,* dated 16th May 1899, p. 55 ; and *ibid,* dated 1st August 1899, p. 16.

The Act has been repealed except in the Scheduled Districts by Madras Act I of 1902.

The Act has ceased to be in force in the Scheduled Areas in the East Godavari, West Godavari and Visakhapatnam districts, by virtue of section 2 of the Madras Court of Wards Act, 1902, (Madras Act I of 1902), which has been extended to those areas by the Madras (Partially Excluded Areas) Court of Wards Regulation, 1940 (Madras Regulation V of 1940).

[2] For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 13th December 1898 ; for Report of the Select Committee *see ibid,* dated 1st August 1899, p. 1 ; for Proceedings in Council, *see ibid,* dated 14th February 1899, p. 9 ; and *ibid,* dated 12th December 1899, p. 16.

Interpretation-clause.

"Tenant."

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "tenant," with its grammatical variations and cognate expressions, includes a person who as lessee, sub-lessee, mortgagee or sub-mortgagee or in good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land is in possession thereof, or who, with the *bona fide* intention of attorning and paying the customary rent to the person entitled to cultivate or let waste-land, but without the permission of such person, brings such land under cultivation and is in occupation thereof as cultivator :

"Ejectment."

(2) "ejectment" includes redemption or recovery of possession of land mortgaged :

"Improvement."

(3) "improvement" means any work or product of a work which adds to the value of the holding, is suitable to it and consistent with the purpose for which the holding was let, mortgaged or occupied.

What are presumed to be improvements.

4. Until the contrary is shown the following works or the products of such works shall be presumed to be improvements for the purposes of this Act—

(*a*) the erection of dwelling houses, buildings appurtenant thereto, and farm buildings ;

(*b*) the construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes ;

(*c*) the preparation of land for irrigation ;

(*d*) the conversion of one-crop into two-crop land ;

(*e*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or of waste land which is culturable ;

(*f*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(*g*) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto ;

(*h*) the planting or protection and maintenance of fruit-trees, timber-trees and other useful trees and plants.

Tenant entitled to compensation on ejectment.

5. (1) Every tenant shall on ejectment be entitled to compensation for improvements which have been made by him, his predecessor in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid ; and every tenant to whom compensation is so due shall, notwithstanding the determination of the tenancy or the payment or tender of the mortgage-money (if any), be entitled to remain in possession until ejectment in execution of a decree or order of Court.

(2) A tenant so continuing in possession shall during such continuance hold as a tenant subject to the terms of his lease or of the mortgage, as the case may be.

Decree in ejectment to be conditional on payment of amount of compensation ascertained under this Act or the difference between it and the amount, if any, adjudged to the plaintiff from the defendant.

6. (1) In a suit for ejectment instituted against a tenant in which the plaintiff succeeds and the defendant establishes a claim for compensation due under section 5 for improvements, the Court shall ascertain as provided in sections 9 to 18 the amount of the compensation and shall pass a decree declaring the amount so found due and ordering that, on payment by the plaintiff into Court of the amount so found due and also the mortgage-money (if any), the defendant shall put the plaintiff into possession of the land with the improvements thereon.

(2) If in such suit the Court finds any sum of money due by the defendant to the plaintiff for rent or otherwise in respect of the tenancy, the Court shall set-off such sum against the sum found due under sub-section (1), and shall pass a decree declaring as the amount payable to him on ejectment the amount (if any) remaining due to the defendant after such set-off.

Compensation for subsequent improvements and revaluation, if necessary, of improvements at the time of ejectment.

(3) The amount of compensation for improvements made subsequent to the date up to which compensation for improvements has been adjudged in the decree, and the re-valuation of an improvement for which compensation has been so adjudged, when and in so far as such re-valuation may be necessary with reference to the condition of such improvement at the time of ejectment as well as any sum of money accruing due to the plaintiff subsequent to the said date for rent or otherwise in respect of the tenancy, shall be determined by order of the Court executing the decree and the decree shall be varied in accordance with such order.

(4) Every matter arising under sub-section (3) shall be deemed to be a question relating to the execution of a decree within the meaning of clause (*c*) of section 244 of the Code of Civil Procedure. [1]

Tenant may remove buildings, works or trees not deemed improvements, within a time to be fixed.

7. Whenever a Court passes a decree or order for ejectment against a tenant and such tenant has erected any building, constructed any work or planted any tree which the Court finds is not an improvement for which compensation can be claimed, but which the Court finds can be removed without substantial injury to the holding, such tenant may remove such building, work or tree within a time to be fixed by the Court in its decree or order.

[1] See now section 47 of the Code of Civil Procedure, 1908 (Central Act V of 1908).

Powers to make rules for appointment of assessors, etc.

8. The [1][State Government] may, from time to time, by notification in the *Fort St. George and Malabar District Gazettes*, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section 6 for an improvement, such number of assessors as the [1] [State Government] thinks fit, determining the qualifications of those assessors, the mode of selecting them, the fee payable to them, and the procedure to be followed in case of a difference of opinion between the judge and one or more of such assessors.

Improvement producing an increase in the value of the annual net produce.

9. (1) When the improvement is not an improvement to which section 13 applies and has caused an increase in the value of the annual net produce of the holding, the Court shall determine, as nearly as may be, the average net money value of such increase and the number of years during which such increase may reasonably be expected to continue, and shall then ascertain the present value, at 6 per cent of an annuity equal to such money value for such number of years, and also the cost of making the improvement determined in the manner prescribed in section 11.

(2) If the present value of the annuity does not exceed the cost of making the improvement, the present value shall be the compensation to be awarded.

(3) If the present value of the annuity exceeds the cost of making the improvement, the compensation to be awarded shall be the cost together with one-half of the excess.

Explanation.—The value of the net produce means the amount remaining after deducting from the value of the gross produce, the cost of cultivation and the Government assessment and cesses.

Improvement consisting of trees or plants spontaneously grown during tenancy or sown or planted by tenants.

10. When the improvement is not an improvement to which section 9 applies, but consists of timber trees or of other useful trees or plants spontaneously grown during the period of the tenancy or sown or planted by any of the persons mentioned in section 5, the compenstion to be awarded shall be three-fourths of the sum which the trees or plants might reasonably be expected to realize, if sold by public auction to be cut and carried away.

Other kinds of improvements.

11. When the improvement is not an improvement to which section 9 or 10 applies, the compensation to be awarded shall be the cost of the labour, including supervision thereof, and of the materials, together with other expenditure, if any, which would at the time of the valuation be required to make

[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

the improvements less a reasonable deduction on account of the deterioration, if any, which may have taken place from age or other cause.

Value of improvement to be ascertained in the way most favourable to the tenant.

12. Notwithstanding anything contained in sections 9, 10 and 11, the amount of compensation to be awarded for an improvement shall be ascertained in the way prescribed by any of the said sections which is most favourable to the tenant.

Illustrations.

(*a*) The compensation to be awarded for a jack tree as a fruit-tree is ascertained under section 9 to be Rs. 7, but for the same tree as a timber tree it is ascertained under section 10 to be Rs. 10.

(*b*) The compensation to be awarded for an immature casuarina plantation is ascertained under section 10 to be Rs. 20, but under section 11 to be Rs. 100.

In each case, the Court shall award the higher amount.

Improvement consisting in the protection and maintenance of trees and plants not sown or planted by tenants and of trees and plants spontaneously grown prior to tenancy.

13. When the improvement consists in the protection and maintenance of timber or fruit trees or of other useful trees or plants not sown or planted by any of the persons mentioned in section 5, or of such trees or plants spontaneously grown prior to the commencement of the tenancy, the compensation to be awarded shall be the proper cost of such protection and maintenance ascertained as provided in section 11.

Power to frame tables of maximum and minimum rates of compensation.

14. The [1] [State Government] may prepare for the whole or any part of the Malabar district tables showing the maximum and the minimum rates of compensation to be awarded under this Act for all or any class of improvements, and when such tables have been published the amount awarded as compensation under sections 9, 10, 11 and 12 shall not, except where the Court is satisfied that there has been exceptional care, skill or enterprise on the part of the tenant, exceed such maximum rates, nor shall it in any case be less than such minimum rates.

Power to prepare tables of prices of products, the cost of cultivating paddy, planting, protecting, and maintaining trees and plants.

15. (1) For the purpose of determining the amount of compensation to be awarded under this Act, the [1] [State Government] may prepare tables for the whole or any part of the Malabar district showing all or any of the following matters :—

(*a*) the price of coconuts, arecanuts, pepper and paddy ;

[1] The words " Provincial Government " were substituted for the words " Local Government " by the Adaptation Order of 1937 and the word " State " was substituted for " Provincial " by the Adaptation Order of 1950.

(*b*) the cost of—

(i) cultivating and harvesting a crop of paddy;

(ii) planting protecting and maintaining a coconut tree, an arecanut tree, a jack tree, and a pepper vine until the tree or vine is in bearing;

(iii) protecting and maintaining a coconut tree, an arecanut tree, a jack tree and a pepper vine for one year when in bearing.

Such tables to be presumptive evidence that the prices and costs therein mentioned are correct.

(2) The tables prepared under this section shall on publication be receivable in evidence, and the rates and amounts therein specified shall be presumed to be the proper rates and amounts until the contrary is proved: Provided that, in so far as such tables prescribe prices of products, the presumption shall not be rebuttable except by proof of the average price as provided in section 16.

Value to be ascertained where no table has been prepared or the correctness of the price mentioned in the table is disputed.

16. In respect of any product for which no table showing the price has been published, and whenever the presumption under section 15 as to price is sought to be rebutted, the Court shall adopt as the money value, for the purpose of awarding compensation under section 9, the average price as nearly as may be ascertainable, in the taluk where the land is situated, for a period of ten years immediately preceding the institution of the suit.

Tables to be published.

17. The tables prepared under this Act shall be published in English and Malayalam in the *Fort St. George and Malabar District Gazettes*, and shall be kept publicly posted in the Courts having jurisdiction over the area to which the tables apply.

The [1] [State Government] may by like publication cancel or vary from time to time the tables so published.

Compensation may be refused where trees have been overplanted.

18. When trees are planted in excess of the following scale, the Court, if satisfied that, in the circumstances of the particular case, the land is overplanted, may, notwithstanding anything hereinbefore contained, either refuse to grant any compensation, or may grant compensation at a lower rate, for so many of the trees as are in excess of the scale and are immature:—

Coconut trees	120 per acre.
Arecanut trees	720 ,,
Jack trees	60 ,,

In the case of a mixed garden each tree shall be allowed a proportionate fraction of an acre according to the above scale.

[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

19. Nothing in any contract made after the first day of January, 1886, shall take away or limit the right of a tenant to make improvements and to claim compenstaion for them in accordance with the provisions of this Act : Contracts affecting tenant's right to make improvements.

Provided that noting herein contained shall affect any agreement in writing registered made after the effecting of the improvements settling the amount of compensation due therefor at the date of such agreement.

20. Nothing in this Act shall be construed as taking away the right of any person who may be entitled by law or custom to claim compensation for any improvements other than those dealt with under the provisions of this Act. Saving clause.

MADRAS ACT No. V OF 1900.[1]

[THE MADRAS IRRIGATION CESS (AMENDMENT) ACT, 1900.]

[*4th September* 1900]

An Act to amend Madras Act VII of 1865.

WHEREAS it is expedient to amend Madras Act VII of 1865 ; It is hereby enacted as follows :— Preamble.

1. Sections 1 and 4 of Madras Act VII of 1865, hereinafter referred to as the said Act, shall be read and construed as if at the time of the passing of the said Act there were and had been inserted in lieu of the said sections the following, viz.— New section substituted for sections 1 and 4.

[*Vide pages* 328 *to* 331 *supra.*]

2. No water-cess which would not have been leviable if this Act had not been passed shall be hereafter levied for any period prior to the 1st July 1899. Limitation on the retrospective effect of section 1.

3. All rules that may hereafter be prescribed by Government under section 1 of the said Act and any alterations or amendments that may hereafter be made in the rules made under that section which are now in force shall be made after previous publication. New rules, etc., under section 1 to be made after previous publication.

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[1] Short title, "The Madras Irrigation Cess (Amendment) Act, 1900"— was given by the Repealing and Amending Act, 1901 (Central Act XI of 1901).

For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 8th March 1898, p. 22: for Report of the Select Committee, *see ibid*, dated 3rd March 1900, p. 1 ; for Proceedings in Council, *see ibid*, dated 3rd May 1898, p. 34 ; *ibid*, 12th December 1899, p. 16 ; and *ibid*, 12th June 1900, p. 176.